Supreme Court, U.S.
FILED
JUL 27 1988
JOSEPH F. SPANIOL, JR.
CLERK

(2)

No. 88-6

In The
SUPREME COURT OF THE UNITED STATES
October Term, 1988

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SCOTT B. CORR, et al.,
Petitioners,

v.

SAMUEL A. HINDS,
Respondent.

—————o—————

On Petition For A Writ Of Certiorari
To The Supreme Judicial Court Of Maine

—————o—————

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Petitioners, Scott Corr and his parents, brought the underlying action on January 22, 1985, for damages arising out of an incident of sexual abuse involving Respondent Samuel A. Hinds and Scott Corr. Petitioners then obtained an ex parte order of attachment and trustee process against two promissory notes due to respondent from the sale of this real estate business in Maine as well as against the proceeds of the sale of another parcel of real estate. On August 5, 1985, the action was placed on the expedited pre-trial list, requiring that discovery be completed by November 5, 1985. On motion of respondent, the Superior Court extended the discovery deadline to June 15, 1986.

On March 6, 1986, respondent served

interrogatories and requests for production of documents on petitioners Scott Corr, George Corr, and Patricia Corr and on March 27, 1986, respondent filed notices to take their oral depositions.[1] Respondent agreed to extend the deadline for responding to the interrogatories and to the request for production of documents to May 9, 1986. When petitioners had failed to respond by May 20, 1986, however, respondent filed a motion to compel discovery. On the morning of the hearing on respondent's motion, petitioners George and Patricia Corr

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1. Defendant took the oral deposition of plaintiffs George and Patricia Corr in New York in April, 1986. After receiving an extension of the discovery deadline, defendant took the deposition of plaintiff Scott Corr in November, 1986, in Germany, where Corr was stationed.

served respondent with their answers to interrogatories, as well as certain documents and no action was taken on the motion to compel. Petitioner Scott Corr did not serve his answers to interrogatories until the day of his deposition in November, 1986. None of the petitioners served written response to respondent's request for production as required by M.R.Civ.P. 34(b).

On May 13, 1987, respondent brought a second motion to compel and a request for sanctions, stating that as of May 18, 1987, he had received only sporadic documents and no written response to his requests for production.[2] A hearing on

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2. On July 14, 1987, unrelated to defendant's motion to compel, the Superior Court ordered plaintiffs to file the report of conference of counsel within 10 days or the case would be dismissed. The report was filed on July 29, 1987.

the second motion was held on August 7, 1987. On that date, petitioners filed a partial response to the request for production and stated that they had produced all discoverable documents in their possession.[3] Noting that no objections had ever been filed to respondent's request, the Superior Court ordered the production of all the documents requested. As a sanction for petitioners' failure to file a written response in a timely manner, the Superior Court ordered the attachment vacated.

The petitioners then sought Appellate review by the Maine Supreme Judi-

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3. On August 24, 1987, each plaintiff filed a separate formal response to defendant's request for production, again essentially stating that all documents known to exist were attached.

cial Court under the Collateral Order Doctrine. The appeal was heard in January of 1988 and the Maine Supreme Judicial Court affirmed the action of the Justice below. Petitioners then sought a Writ of Certiorari to this Court.

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REASONS FOR DENYING THE WRIT

I. The Court Below Did Not Violate Petitioners' Right To Due Process

A. Waiver

As the Petitioners' Appendix (pages App. 1 to App. 8) clearly show, the argument they make now about lack of notice occurred to them after the Maine Superior Court Justice made his Order vacating the attachment. At the hearing on August 7, 1987, the Petitioners did not press their claim of surprise or lack of notice, or lack of ability

to prepare for the sanction requested. Thus, as the Maine Supreme Court clearly held, they did not preserve the issue (Petitioners' App. 19-20).

B. On The Merits, There Is No Due Process Violation

It is well established that the process to which one is due in regard to Court's exercising authority over its own docket and calendars depends upon the nature of the sanction applied. E.g. J.M. Clemmshaw Co. v. City of Norwich, 93 F.R.D. (D.Conn. 1981). Moreover, the adequacy of notice and hearing respecting proceedings that may affect a party's rights turns, to a considerable extent, on the knowledge which the circumstances how such party may be taken to have of the consequences of his own conduct. Link v. Wabash Railroad Co.,

370 U.S. 626, 632 (1962). Here, the clear reading of Maine Rule of Civil Procedure 37(d) and the request in Respondent's Motion to the Court below was for the imposition of "such sanctions as are deemed just". In the State of Maine, that clearly implicates Rule 37(b), which includes as potential sanctions:

> that matters be taken as established; an order refusing to allow the disobedient party to support or oppose designated claims or defenses; an order striking pleadings or parts thereof, or dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.

Clearly, then, Petitioners were put on notice that the range of sanctions for disobedience was great. Moreover, the Maine Supreme Court has held that due process is not violated in the area of

sanctions for discovery violations where the disobedient party is given an opportunity to explain its noncompliance (Ireland v. Galen, 401 A.2d 1002 (Me. 1979)), which was the case here. In addition, the Petitioners had sufficient notice to pass constitutional muster. Ireland v. Galen, supra, at 1004-5. In this case, Petitioners were notifed of the hearing and were represented. No denial of due process has been demonstrated (Opinion of the Court below reproduced at Petitioners' Brief App.-20).

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CONCLUSION

The Petition for a Writ of Certiorari should be denied.

DATED: July 27, 1988

Respectfully submitted,

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Attorney for Respondent

CERTIFICATE OF SERVICE

I, Mark E. Dunlap, Esquire, being first duly sworn, hereby depose and say that:

1. I am a member of the Bar of this Court.

2. I have this day filed forty (40) copies of the foregoing Brief In Opposition To Petition For A Writ Of Certiorari in the matter of Scott B. Corr, et al. v. Samuel A. Hinds (October Term, 1988, No. 88-6), now pending in the Superior Court for the County of Cumberland and State of Maine by depositing said forty (40) copies of the foregoing Brief at the United States Postal Service Post Office at Portland, Maine, first class (priority mail), postage prepaid, addressed to Joseph F. Spaniol,

Jr., Clerk, United States Supreme Court, Washington, D.C., 20543.

3. I have served three (3) copies of the foregoing Brief In Opposition To Petition For A Writ Of Certiorari in the matter of Scott B. Corr, et al. v. Samuel A. Hinds (October Term, 1988, No. 88-6), now pending in the Superior Court for the County of Cumberland and State of Maine, upon Ralph W. Brown, Esquire, attorney for the Petitioners, by depositing said three (3) copies of the foregoing Brief at the United States Postal Service Post Office at Portland, Maine, first class (priority mail), postage prepaid, addressed to him at his office at 640 Brighton Avenue, Portland, Maine, 04102.

4. I further certify that all parties required to be served have been served.

DATED: July 27, 1988

Mark E. Dunlap

STATE OF MAINE
CUMBERLAND, SS. July 27, 1988

Then personally appeared before me the above named Mark E. Dunlap, a person known to me, who made oath that the matters set forth in the foregoing Certificate of Service were true based upon his personal knowledge.

Notary Public

STATEMENT OF SERVICE

I, Mark E. Dunlap, Esquire, being first duly sworn, hereby depose and say that:

1. I am a member of the Bar of this Court.

2. I have personally placed this date forty (40) copies of the Brief In Opposition To Petition For A Writ Of Certiorari in the matter of Scott B. Corr, et al. v. Samuel A. Hinds (October Term, 1988, No. 88-6) by depositing said forty (40) copies of the foregoing Brief at the United States Postal Service Post Office at Portland, Maine, first class (priority mail), postage prepaid, addressed to Joseph F. Spaniol, Jr., Clerk, United States Supreme Court, Washington, D.C., 20543.

3. The time of filing of the Petitioners' Petition was June 28, 1988 and so I filed the responsive Brief within the time permitted by the Supreme Court Rules.

DATED: July 27, 1988

_____
Mark E. Dunlap

STATE OF MAINE
CUMBERLAND, SS. July 27, 1988

Then personally appeared before me the above named Mark E. Dunlap, a person known to me, who made oath that the matters set forth in the foregoing Statement Of Service were true based upon his personal knowledge or upon information and belief, and insofar as based upon information and belief, based

upon information which he believed to be true.

_____

Notary Public